

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ROBERT J. OSBORNE,

Plaintiff,

vs.

DEPUTY DUESTCH, *et al.*,

Defendants.

Case No. 2:07-cv-00922-LRH-GWF

**FINDINGS AND  
RECOMMENDATIONS**

On October 11, 2007, the undersigned Magistrate Judge issued Order (#3), which granted Plaintiff's application to proceed *in forma pauperis*. However, the Court ordered that "if the Attorney General does not accept service of process for any named defendant(s), then plaintiff must file a motion identifying the unserved defendant(s), requesting issuance of summons for the unserved defendant(s), and specifying the full name(s) and address(es) of the unserved defendant(s)." *See Order (#3)*. On October 22, 2007, the Attorney General filed its Notice of Non-Acceptance of Service (#5) stating that it could not accept service on behalf of Defendants as Defendants are not Nevada State employees. *See Civil Docket (#5)*. The Attorney General further stated that Defendants appear to be Nye County employees. *Id.* Because Plaintiff's Complaint does not contain any allegations against any Nevada State employee, Plaintiff was to file a motion identifying the unserved Defendants, requesting issuance of summons for the unserved Defendants, specifying the full names and addresses of each unserved Defendant pursuant to Court Order (#3). To date, Plaintiff has failed to file a motion in accordance with Court Order (#3). Accordingly,


**IT IS HEREBY RECOMMENDED** that this action should be **dismissed** without prejudice based on Plaintiff's failure to file a motion identifying the unserved Defendants, requesting issuance of

1 summons for the unserved Defendants, specifying the full names and addresses of each unserved  
2 Defendant pursuant to Court Order (#3).

3 **NOTICE**

4 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
5 writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the  
6 courts of appeal may determine that an appeal has been waived due to the failure to file objections  
7 within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1)  
8 failure to file objections within the specified time and (2) failure to properly address and brief the  
9 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues  
10 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*  
11 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

12 DATED this 9<sup>th</sup> day of December, 2008.

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15 **GEORGE FOLEY, JR.**  
16 **UNITED STATES MAGISTRATE JUDGE**  
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